IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 575 OF 1988

The State of Maharashtra.

....Appellant.

Vs.

1. Laxman Smabhaji Shejul.
2. Bira Tuka Sehjul.
3. Keru Dnynu Shejul.
4. Rajaram Bhimaji Shejul.
5. Atmaram Keru Shejul.
6. Sarjerao Biru Shejul.
7. Sukhadeo Biru Shejul.
8. Anubai Laxman Shejul.
9. Indrabai Keru Shejul.
10. Sambhaji Laxman Shejul.

....Respondents.

.....

A.P.P. Shri. F.R. Shaikh for the Appellant.

Adv. Smt. S.D. Khot for the Respondent Nos. 1 to 7.

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CORAM: S.S.PARKAR &
R.S.MOHITE, JJ.

DATED: 2ND SEPTEMBER,2004

ORAL JUDGMENT (PER R.S. MOHITE, J.)

1. This is an appeal filed by the State of Maharashtra seeking to quash and set aside the Judgment and order passed by the Additional Sessions Judge, Sangli on 28.3.1988 in Sessions Case Nos. 112 of 1986 and 125 of 1986 acquitting all the accused being tried

in the two sessions cases from the charges under Sections-147, 148, 149, 302 read with 34, Section-324 read with 34, Section-323, 149 read with 34 of the Indian Penal Code and the further charge against the accused No.3 under Section 324 of the Indian Penal Code, accused Nos. 1,2 and 4 under Section 302 of the Indian Penal Code and accused Nos. 6 to 10 under Section-323 of the Indian Penal Code.

2. The brief facts of the prosecution case were as under:

a) That, the deceased Darayappa Shejul was a resident of Village Khalati situated in District Sangli. He was the husband of P.W.No.3 Shalini. Accused No.1 Laxman was a step brother of the deceased Darayappa. Accused No.10-Sambhaji was the father of Darayappa. Accused Nos. 2- Bira and Accused No.3 Keru were the cousin brothers of Darayappa. Accused No.4 Rajaram was the son of accused No.3 Keru. Accused No.6 Sarjerao and accused No.7 Sukhadeo were the sons of the accused No.2 Bira. Accused No.8 Anubai was the wife of accused No.1-Laxman, accused No.9 Indrabai was the wife of accused No.3 Keru and accused No.5 Atmaram was the son of accused No.9 Indrabai.

b) The family of the accused and the deceased were residents of an area in the village known as Shejul Vasti. Their agricultural lands were near the said vasti and situated on the western side of the vasti. For the last about 15 years, deceased Darayappa had separated from his step brother i.e. accused No.1-Laxman. Darayappa had six children from P.W.No.3 Shalini. He, P.W.No.3 Shalini, his mother Tanubai and his six children were all residing together in one house. Out of the six children of Darayappa and Shalini, on the date of the incident, daughter Ashakka was aged about 14 years and daughter Ushakka was aged about 10-years. Accused No.1-Laxman, Accused No.10-Sambhaji, Accused No.8 Anubai and Housabai-mother of accused No.1-Laxman were residing together in a separate house. The agricultural lands belonging to the families had been partitioned and each branch of the family was cultivating a separate share. However, the source of water for irrigating these lands was a common well. The family members had agreed to draw the water from the common well by rotation and the cycle for drawing such water was a period of 12 days. Out of these 12 days, one of the accused was to draw water for the first three days. For the next three days, accused

No.4 Rajaram was to draw water, followed by accused No.3 Bira for the next three days. For the last three days accused No.10 Sambhaji was to draw the water. During Sambhaji's turn of three days Darayappa was used to draw the water for 1.1/2 day and his step brother accused No.1-Laxman was drawing water for the remaining 1.1/2 day. This arrangement had been in place for the last about 13 years.

c) The incident resulting the death of Darayappa took place on 25.4.1986, between 7.00 to 7.30a.m. in Gat No.395 belonging to Darayappa. 15-days prior to the incident turmeric crops had been planted in the agricultural land of the Drayappa. This crop had been irrigated by drawing water from the common well. That, on the date of the incident this crop had been harvested.

d) Two days prior to the incident, which was a Wednesday, it was Darayappa's turn to take water from the common well. Darayappa was also to take water on the next day i.e. Thursday. However, on both these days, accused No.1 Laxman took water from the well and therefore, on the date of the incident, which was a Friday, when Darayappa went to his agricultural land

and found that accused No.1 Laxman, accused No.2-Bira, accused No.3- Keru, accused No.4- Rajaram and accused No.10 Sambhaji were present in the field, he went up to them and requested these persons to allow him to draw water from the common well. Accused No.1-Laxman, accused No.2-Bira, accused No.3-Keru and accused No.4 Rajaram refused to allow the deceased Darayappa to draw water from the common well. P.W.No.3-Shalini wife of Darayappa had followed her husband to the agricultural land and was present near Darayappa. She saw that accused No.2 Bira hit Darayappa with a stone on his head, accused No.1 Laxman hit Darayappa with an axe on his head and accused No.4 Rajaram also gave an axe blow on the head of Darayappa.

e) As a result of these blows, Darayappa fell on the ground. After he fell, accused No.1 Laxman, and accused No.4-Rajaram given further axe blows on the person of Darayappa when he was lying on the ground.

f) On seeing the assault on her husband, P.W.No.3 Shalini fell on the body of her husband to save him from the attacks. She made a request that they should not beat her husband. At that time, accused No.8 Anubai and accused No.9 Indrabai came to the spot.

Accused No.5 Atmaram, accused No.6-Sarjerao and accused No.7 Sukhadeo also came to the spot armed with sticks. Accused Nos. 5, 6 and 7 started delivering stick blows on the ankles, knees and back of Darayappa. Accused Nos. 8 and 9 pulled her hair and caused her to fall on the ground. They delivered fist and kick blows to P.W. No.3. Shalini.

g) Rajaram Kashiram Pawar and Dnyanu Pawar who had also came there intervened and attempted to separate the parties. Rajaram Pawar tried to snatch away an axe from the hands of accused No.1-Laxman and in this process Rajaram Pawar himself suffered an injury. P.W.No.3 Shalini attempted to snatch away the axe from the hands of accused No.3 Keru and during this scuffle, Keru received an axe blow on his forehead, causing an injury. Accused No.10 Sambhaji hit Rajaram Pawar with an aluminium pot. The daughters of Darayappa namely Ashakka and Ushakka came running and they also tried to separate the parties. Krishanabai Shejul and Parubai Shejul were two other ladies standing at a distance of 15ft. from the spot where Darayappa was assaulted. Darayappa sustained several bleeding injuries on his person and fell on the ground. The accused persons then went away from the spot.

h) After some time one Akaram Shejul and Shankarappa came to the spot. They arranged for a bullock cart. Darayappa was lifted from the ground and put into the bullock cart. P.W.No.3 Shalini, Darayappa, Shankarappa and Akaram then came in the bullock cart upto Village Kharati. From there, they travelled in a jeep to Government Dispensary, Jath.

i) At the Jath Medical Dispensary, P.W.No.6 Dr.Mahadeo Baburao Salgar was working as Medical Officer. He examined Darayappa at about 11.a.m. on 25.4.1986. He noticed the following 17 injuries on the person of Derayappa.

1. C.L.W. over forehead on right side crescent shaped measuring 8cm x 3cm. scalp deep. Bleeding was present. Skull bone was depressed 1 cm. in depth and there was fracture of frontal bone.

2. C.L.W. parallel and 2 cm. above first injury. It was measuring 5 cm. x 1 cm. scalp deep bleeding was present.

3. C.L.W. over suggagal suture extending from occipital bone till frontle bone. It was measuring 10 cm. x1/2 cm. scalp deep. Bleeding present.

4. C.L.W. parallel to injury No.III. 3 cm. away from injury No.II on right carestal bons measuring 9 cm. x 3 cm. and scalp deep bleeding present.

5. C.L.W. parallel to injury Nos. 4 and 5 from injury No.4 on right parital bone. It was measuring 5 cm x 1 cm and scalp deep. Bleeding was present.

6. C.L.W. occipital bones 7 cm x 1/2 cm scalp deep. Bleeding was present.

7. C.L.W. perpendical to injury No.6 on occipital bone. It was measuring 5 cm x 1/2 cm. scalp deep. Bleeding was present.

8. C.L.W. occipital bone 3 cm. x 1/2 cm. scalp deep in the line of injury No.7 and 4 cm. away from injury No.7.

9. C.L.W. over belt parital bone 10 cm. from midline. It was measuring 5 cm. x 3 cm. scalp deep. Bleeding was present.

10. Ecctoymees on right arm lateral aspect. It was measuring 8 cm. x 2 cm. reddish in colour.

11. Minor abrasion over back near first number spine.

12. Minor abrasion over right foot near fight elbow joint.

13. Minor abrasion on middle of the right leg on anterior aspect.

14. C.L.W. over left elbow joint on lateral aspect. It was measuring 3 cm. x 1/2 cm. skin deep. Bleeding was present.

15. Eccomyses above 3 cm. from umbilicus. It was measuring 14 cm. x1 cm. raddish in colour.

16. C.L.W. over rirhg knees joint. On anterior aspect 1 cm. x 1/2 cm. Bleeding was present.

17. Eccomysis below right side of chest on back below interior and of scapula. It was measuring 11 cm. x 1 cm. reddish in colour.

He issued a Medical certificate (Exh.45). He observed therein that all the injuries were caused by stick blows and that the the age of the injuries was six hours. Then under his covering letter he referred Darayappa to Civil Hospital, Sangli for further treatment.

j) After completing the examination of Darayappa, Dr. Mahadeo B. Salgar then examined the injuries suffered by P.W. No.3 Shalini. He found following four injuries on her person.

1) Incised wound in between middle and index finger of left hand measuring 7 cm. x 1 cm. taprin both ends.

2) C.L.W. over dorsal of the middle finger of left hand measuring 4 cm. x 1/2 c.m. bleeding present. Proximal phlox exposed.

3. Depression of skull bone on right side of forehead measuring 2 cm. in diameter.

4. Escomyaes two in number below right infracapiler parallel to each other. No.1 was 5 cm x 1 cm. and other was 6 cm. x 1 cm. reddish in colour.

He issued a Medical certificate (Exh.48) in respect of the injuries found on the person of Shalinibai. He opined that the injury No.1 was caused by hard and sharp object, whereas injury Nos. 2 to 4 were caused by hard and blunt object. He referred Shalini also to the Civil Hospital, Sangli under his covering letter (Exh.49).

k) On the way to the Civil Hospital, Shalini went

to the sub Police Station and lodged a complaint. The police also referred Darayappa and Shalini to the Civil Hospital, Sangli and later on Darayappa and Shalini were admitted in Civil Hospital for treatment.

l) Darayappa died at the Civil Hospital, Sangli on 30.4.1986 and on the same day at about 2.00p.m. post mortem of the dead body of Darayappa was carried out by P.W.No.7 Dr. Ashok Kulkarni.

m) P.W.No.8 Somanna Kumathekar was a P.S.I. attached to the Jath Police Station. He was the police Officer who had recorded the complaint of P.W.No.3 Shalini at about 11.a.m. on 25.4.1986 and had referred Darayappa and Shalini to the Civil Hospital, Sangli for further treatment. On the basis of the complaint lodged by Shalini (Exh.41) P.S.I. Somanna registered C.R. No.48 of 1986 for offences punishable under section- 147,148,149, 307, 323 and 324 of the Indian Penal Code. The said C.R. was registered at about 12.15p.m. on that day. In pursuant thereto P.S.I. Somanna commenced an investigation. He proceeded to the spot and recorded the statement of P.W.No.5 Rajaram. He found that P.W.No.5 Rajaram had also suffered injuries and therefore, he referred Rajaram

Pawar to the Medical Officer Jath for examination and treatment. He then went to the scene of offence and reached the said spot at 1.30p.m. In the presence of two panchas he drew the panchanama of the scene of offence (Exh.18). Under the said panchanama he attached blood stained earth (Article-1), simple earth (Article-2), a black coloured blood stained stone (Article-3), red and white colour bangle pieces (Article-4), a spade with blood stained handle (Article-5), a blood stained towel (Article-6), a blood stained cap (Article-7), blood stained petticoat (Article-8) and blood stained blouse (Article-9) on 25.4.1986. He also recorded the statements of seven other witnesses including P.W.No.4 Ashakka. He returned back to the police station at 11.30p.m. and at that time Police Station Officer Head Constable Aiwale produced before him a complaint lodged by accused No.3 Keru for a non cognizable offence and the injury certificates of the accused persons. These documents were incorporated in the investigation papers by P.S.I. Somanna. P.S.I. Somanna then went and arrested the accused Nos. 1 to 4 at about 11.30p.m. on 25.4.1986. At the time of arrest he found that the clothes of the accused persons were stained with blood. The blood stained clothes found on the person of the

accused Nos. 1 to 4 were attached under a panchanama (Exh.20) on 26.4.1986. These clothes of the accused were marked Article Nos. 10 to 20. On 26.4.1986 P.S.I. Somanna recorded the statements of four witnesses at Khalati. On 27.4.1986 the blood stained clothes of Darayappa and Shalini were attached under panchanama (Exh.21). The said clothes were marked as Articles 21 to 25) before the court.

n) On 27.4.1986 accused No.1 Laxman disclosed that he had hidden an axe and offered to show the same. The memorandum of statement was thus drawn (Exh.58). At the same time, accused No.4 Rajaram also disclosed that he had kept an axe hidden on the roof of the cattle shed near his house and stated that he was willing to produce the same. A separate memorandum relating to the statement made by accused No.4 was also reduced to writing (Exh.59). Thereafter, police, panchas, accused No.1 Laxman and accused No.4 Rajaram came to village Khalati. There accused No.1 Laxman led the police and panchas to a farm house and he took out one hidden axe from the bathroom. It was found that the blade of the axe was stained with blood. This axe was attached under panchanama (Exh.60). The axe so seized at the behest of accused No.1 Laxman was Article

26 before the court. The accused No.1 Laxman was then made to sit in the Jeep. Thereafter, accused No.4 Rajaram led the police and the panchas to his cattle shed. Accused No.4 Rajaram then took out an axe which was hidden in the roof of the cattle shed and the same was attached under panchanama (Exh.61). Axe discovered at the behest of accused No.4 Rajaram was (Article 27) before the court.

o) Subsequently on the same day the house of accused No.3 Keru was searched in the presence of the panchas and two blood stained sticks were recovered under a panchanama (Exh.32). These two sticks, discovered from the house of accused No.3 Keru were (Articles 28 and 29) produced before the court. Thereafter, the house of accused No.2 Bira was also searched in the presence of two panchas and two blood stained sticks were discovered from her house and these were attached under panchanama (Exh.33). These sticks were (Article Nos. 30 and 31) as produced before the Trial Court. Accused No.10 Sambhaji produced an aluminium pot which was attached under panchanama (Exh.22). This aluminium pot was (Article 32) as produced before the court.

p) Subsequently on 27.4.1986 P.S.I. Somanna arrested accused Nos. 5 to 10 at about 3.30p.m. As the injured Darayappa died in Civil Hospital on 30.4.1986 the offence which had been registered earlier was converted into Section 302 of the Indian Penal Code. On 30.4.1986 P.S.I. Somanna prepared an inquest panchanama (Exh..17) of the dead body of deceased Darayappa. On the next day he collected the post mortem notes (Exh.21) relating to the post mortem conducted on the dead body of the Darayappa.

q) On 6.5.1986 P.S.I. Somanna collected the blood samples from the persons of accused Nos. 1 to 4 in order to ascertain their blood groups. Then under his covering letter (Exh.62), P.S.I. Somanna sent two phials containing blood of accused Nos.1 to 4 and other attached property to the Chemical Analyser for examination and report.

r) On 8.5.1986 P.S.I. Somanna requested the Talathi of Jath to draw a sketch of the scene of offence. Accordingly such a sketch was drawn by the Tahasildar (Exh.30).

s) On 31.5.1986 P.S.I. Somanna recorded the

supplementary statement of P.W.No.3 Shalini Shejul and collected the Injury Certificate (Exh.52).

t) On 19.9.1986, on completion of the investigation P.S.I. Somanna filed a charge sheet in the court of J.M.F.C. Jath alleging offences under Sections-147,148,149,302, 337 and 323 of the Indian Penal Code against the accused persons.

3) That, on the case being committed to the Court of Sessions, the Trial Court framed the charge. All the accused were charged for offences punishable under Sections-147, 148,149,302 read with 34, 324 read with 149, 324 read with 34, 323 read with 149 and 323 read with 34 of the Indian Penal Code. Accused No.1,2 and 4 were charged under Section-302 of the Indian Penal Code individually. Accused No.3 was charged under Section 324 individually and accused Nos. 6 to 10 were charged under Section-323 of the Indian Penal Code individually.

4) At the trial, the prosecution led the evidence of eight witnesses to prove its case against the accused. Out of these witnesses, P.W.No.3 Shalini Shejul, P.W.No.4-Ashatai and P.W.No.5 Rajaram Pawar

were cited as eye witnesses. P.W.No.6 Dr. Mahadeo Baburao Salgar and P.W.No.7 Dr. Ashok Kulkarni were doctors examined to prove the injuries on the person of the deceased Darayappa. P.W.No.6 Dr. Mahadeo Salgar had also examined P.W.No.3 Shalini and issued the certificate in respect of the injuries suffered by her. P.W.No.8 was the Investigating Officer. P.W.No.1 and P.W.No.2 were the two panch witnesses were examined to prove the discoveries said to have been made at the behest of accused No.1 and 4. They were also witnesses to the recovery relating to the sticks from the house of accused No.2 and accused No.3.

5. From the suggestions to the eye witnesses and from their 313 statements, it appears that the accused Nos. 1,2 and 3 set up a case of private defence. Their case was that on the date of the incident it was the turn of accused No.1 Laxman and his father accused No.10 Sambhaji to take water from the well. Therefore, at 7.00a.m. accused No.1 Laxman had started the electric motor for pumping the water from the well. He started the motor and the water began flowing through the water channels. At that time deceased Darayappa had come near the water channel and he questioned Laxman as to what was to be done regarding his turn for

taking water. Deceased Darayappa had embraced accused No.1 Laxman and pushed him on the ground. He then sat on the chest of the Laxman and was strangulating him by pressing his throat. Laxman started shouting that he was dying. Accused No.2 Bira and accused No.3 Keru came there and tried to separate the two. At that time Darayappa lifted his spade and rushed towards the accused Nos. 1,2 and 3. He caused injuries to accused No.2 Bira and accused No.3 Keru. Accused No.1 Laxman left the spot. Later accused no.3 went to his house and then went to Jath Police Station for lodging a complaint against Darayappa. In so far as other accused are concerned their defence was of total denial. Considering the entire evidence led by the prosecution and the version of accused contained in 313 Statements, the Addl. Sessions Judge acquitted all the accused from all the charges against them. Being aggrieved by this Judgment and order, the State filed the present appeal.

6) The submissions on behalf of the State can be summarised as under :

. That, in the Trial Court the prosecution led evidence of P.W.No.3 Shalini Shejul who was an injured

eye witness. That, the presence of Shalini at the scene of offence was natural as the spot of the offence was very near to Shejul vasti. That, the evidence of this eye witness was corroborated by the injuries found on her person as well as on the person of the deceased Darayappa. Her evidence was further corroborated by the discovery evidence relating to the discovery of two axes at the behest of the accused Nos. 1 and 4 respectively of which an axe discovered by accused No.1 was found to have human blood and the axe discovered by accused No.4 was found to have blood group A which was also the blood group of the deceased. It was contended that the evidence of P.W.No.3 Shalini was also corroborated by the finding of a blood stained stone at the spot of the offence. It was lastly corroborated by her own F.I.R. which was lodged on the date of the incident itself against the accused persons and described the overt acts committed by some of the accused. It was contended that the evidence of this witness was further corroborated by the finding of two blood stained sticks at the residence of accused No.2 and two blood stained sticks at the residence of the accused No.3. That, further corroboration to the testimony of this witness could be found from the fact that the blood of group A also belonging to the

deceased was found on the clothes of the accused Nos. 1,2 and 3. It was pointed out that the contradictions and omissions brought on record as regards this witness were of minor nature and that in any case the Trial Court ought to have separated the wheat from the chaff while appreciating the evidence of this witness and was in error in totally discarding the evidence of this witness.

7) On behalf of the defence, it was contended that the grounds for acquittal as given in the Judgment of the Trial Court were cogent and proper. That, in an appeal against an acquittal, if two views were possible then the view which would be in favour of the accused should be taken. It was contended that there was nothing perverse in the impugned Judgment and order. That, in so far as the right to private defence was concerned, there was sufficient evidence on record to prove the said defence beyond the preponderance of possibilities. That, the burden on the accused to prove that they had acted in self defence was lighter than the burden on the prosecution and the accused were not required to prove their defence beyond reasonable doubt. That a blood stained spade was found near the spot where the deceased had fallen. This spade was

shown to have blood group A on it. Accused No.3 Keru also had blood group A and had suffered an bleeding injury. It was nobody's case that the deceased had been hit by the spade and therefore, the blood on the spade could only be of accused No.3. Reliance was placed on the fact that accused Nos. 1 to 3 had suffered injuries and that accused No.3 had suffered a spade injury on the vital part of his body i.e. a head. It was pointed out that there was other material on record such as a statement in the F.I.R. to the effect that the incident took place when the deceased had removed the water bund. It was contended that the eye witness P.W.No.3 Shalini has not stated anything about the use of the spade which was found on the spot of the offence and the finding of such a spade at the spot of the offence was only consistent with the defence version and rendered the defence version as probable. It was also contended that the medical evidence did not corroborate the evidence of the eye witness.

8) We have perused the entire record and heard both the sides. At the out set, we must state that out of the three eye witnesses P.W.No.5 Rajaram Pawar did not support the prosecution and was declared hostile.

On perusing his evidence we do not find anything which would he helpful to the prosecution. P.W.No.4-Ashatai who is another eye witness supported the prosecution version but almost the entire version given by her has proved to be an omission in the police statement and therefore, it is not safe to rely upon the evidence of P.W.No.4 Ashatai. By way of occular evidence remains is the sole version of P.W.No.3 Shalini Shejul who is the wife of the deceased. Since obviously her evidence is that of an interested witness we have taken care to appreciate and apprise the same very carefully.

9) About the manner in which the incident had occurred, P.W.No.3 Shalini stated that on the date of the incident her husband Darayappa went to their agriculture land where accused No.1 Laxman, accused No.2 Bira, accused No.4-Rajaram and accused No.3 Keru were present. He had gone there at about 7.a.m. for requesting these accused persons to allow him to draw water from the common well. Accused No.1 Laxman, accused No.2 Bira, accused No.3 Keru and accused No.4 Rajaram refused to allow the deceased Darayappa to draw water from the common well. P.W.No.3 Shalini had followed her husband and was present near him at that time. She saw that accused No.3 Keru picked up a stone

and hit the same on the head of deceased Darayappa. Accused No.1 Laxman delivered an axe blow on the head of Darayappa and similarly accused No.4 Rajaram also delivered an axe blow on the head of the deceased. As the result of these blows her husband Darayappa collapsed on the ground. At that time, accused No.1 Laxman and accused No.4 Rajaram delivered further axe blows on the head of the Darayappa, who was lying in a prostrate position on the ground. She fell upon the body of her husband Darayappa and requested the assailants not to attack. By that time, P.W.No.5 Rajaram Pawar and Dnyanu Pawar arrived at the spot. Accused No.8 Anubai and accused No.9 Indrabai also came there. Accused No.6 Sarjerao, accused No.7 Sukhadeo and accused No.5 Atmaram arrived at the spot armed with sticks and started to deliver stick blows on the ankles, knees and back of Darayappa. Accused Nos. 8 and 9 pulled her hair and caused her to fall on the ground. Thereafter, accused Nos. 8 and 9 delivered fist and kick blows to Shalini. Rajaram Pawar and Dnyanu Pawar tried to separate the quarrel. Rajaram Pawar tried to snatch away an axe from the hands of accused No.1 Laxman and in the process the axe hit Rajaram Pawar. Accused No.10 Sambhaji hit Rajaram Pawar by an aluminium pot. Her daughters Ashakka and

Ushakka came there running and tried to separate the quarrel. These girls raised a hue and cry. Krishanabai and Parubai were standing at a distance of about 10 to 15ft. from the spot of the incident. Accused No.3 Keru delivered an axe blow on the left hand middle finger of Shalini. Shalini attempted to snatch the axe from accused No.3 Keru, however, the axe struck on his forehead causing a bleeding injury to Keru. Her husband Darayappa had become unconscious and the accused persons then left the spot. In her cross examination this witness proved her first information report (Exh.41). She identified the towel (Article-6) and cap (Article-7) which belonged to her husband Darayappa. She identified the petticoat and blouse which were on the person of Ashakka. She identified the saree which was on her person. She also identified Articles 24,25 which were the clothes of the deceased. She identified Article 27 which was the axe being used by accused No.4 Rajaram. She identified Article 26 which was another axe used by accused No.1 Laxman. She admitted that the spade Article 27 had been carried by her deceased husband Darayappa. She identified Article-32 as the aluminium pot which was in the hands of accused No.10 Sambhaji. She stated that the spot of assault was at a distance of 20 to 30ft. from their

residential house. She identified the bangles (Article-4) which were found at the spot of the offence as belonging to her.

10) In her cross examination Shalini further admitted that she had stated before the police that they had no share in electric motor. She admitted that Darayappa had carried the spade (Article-5) for making an opening in the water channel for taking water into his agriculture field. She admitted that she had not stated in her F.I.R. that when the talk between the accused No.1 Laxman and her husband was in progress, accused No.10 Sambhaji was present there. She stated that after her husband fell on the ground four axe blows were given on the head of the deceased and seven to eight stick blows were given on his person. The defence version was put to this witness but she denied the same. She denied that Darayappa had hit the spade on the head of accused No.3 Keru or accused No.2 Bira. She denied that the accused No.4 to 10 had not come to the spot and were not present at the time of the occurrence of the incident,.

11. We find that the evidence of Shalini though exaggerated can be partially believed in so far as

there is independent corroboration to the version given by her from the other independent circumstances on record.

12. Broadly speaking the nature of the corroborative evidence is as follows:

a) That in the F.I.R. lodged by the Shalini immediately after the incident she had disclosed that accused No.2 Bira hit Darayappa with stone, accused No.1 Laxman gave an axe blow on the head of her husband and accused No.4 Rajaram gave an axe blow on the head of her husband. That as a result of these blows her husband fell down. She therefore fell on the body of her husband. Laxman was beating her husband with an axe and she had requested him not to assault her husband. Accused No.3 Keru gave a blow with an axe which caused injury on her left hand. Her daughters Ashakka and Ushakka came running from the house and they also fell on the body of their father. Rajaram Pawar and Dnyanu Pawar came at the spot. Accused No.8 and accused No.9 Indrabai came to the spot and pulled her hair.

That accused No.6 Sarjerao and accused No.7 Sukhadeo arrived at the spot and gave stick blows on the person of her husband and also beat her.

b) That, 17 injuries in the nature of C.L.W.'s and abrasions, as reproduced hereinabove were found on the body of the deceased.

c) That, 4-injuries, of which one was an incised wound and other three were C.L.W.s were found on the body of P.W.No.3 Shalini.

d) That, two days after the incident i.e. on 27.4.1986, an blood stained axe was discovered at the instance of accused No.1 and the said axe was found to have human blood.

e) That, on 27.4.1986 another blood stained axe was discovered at the behest of accused No.4 Rajaram and blood group A which belonged to the deceased was found on the said axe.

f) That, on 27.4.1986 two blood stained sticks were found in the house of accused No.2 and

these blood stained sticks were found to have human blood on them.

g) That, on 27.4.1986 two more blood stained sticks were found in the house of accused No.3 Keru and the blood group A which was also the blood group of deceased was found on these sticks.

g) That, bangles (Article-5) identified by P.W.No.3 Shalini were found at the scene of offence.

13. One of the main arguments of the defence was that the medical evidence did not corroborate the version given by the Shalini. It was contended that both the axes (Article Nos.26 and 27) were weapons with sharp edges and if injuries were given on the head of the deceased Darayappa and other portions of the body then the wounds which would be caused would be in the nature of incised wounds and not C.L.W.s as found on the body of Darayappa. In this regard, it would be first necessary to refer the evidence of P.W.No.6 Dr. Mahadeo Salgar. This witness was working as a Medical Officer attached to Primary Health Centre Jath and he

was the first doctor examined Darayappa at 11.00a.m. on 25.4.1986 i.e. on the date of the incident. He found 17 injuries on the body of the deceased, out of which 11 injuries were described as C.L.W.s accompanied by bleeding. Out of these 11-C.L.W.s 9-C.L.W.s are shown to be on the head and each of them was described by him. This witness opined that all these C.L.W.s on the head of Darayappa could be caused by the blade side of the axe (Article 27) before the court. He opined that the injuries in the nature of ecctoymses found on the person of Darayappa could be caused by sticks. In his cross examination he admitted that he had not shaved the head in order to examine the head injuries. He admitted that the margin of the injuries were irregular though he had not mentioned this fact in his injury certificate. He opined that blade side of the axe (Article 27) was blunt. He stated that he had described the injuries as lacerated wounds as the margins of the injuries were irregular. He stated that if a slanting blow of sharp side of the blade of the axe given on the head portion, a C.L.W. would be possible. He admitted that he had not examined the hair bulbs. In so far as the injuries suffered by Shalini he stated that the first wound which was described as an incised wound could be caused by a hard

and sharp object. He stated that the injury Nos. 2,3 and 4 suffered by Shalini were caused by hard and blunt object and that their age was six hours before he had issued the medical certificate. He categorically denied that his opinion to the effect that the head injuries of Darayappa could be caused by the sharp side of the axe (Article 27) before the court, was not correct.

14. The injuries suffered by the deceased were also referred to P.W.No.7 Dr. Ashok Kulkarni who was the Medical Officer who had conducted the post mortem of the deceased. From his evidence we can gather that he had found six sutured wounds on the head of the deceased and he opened the sutures to find six separate wounds on the head of the deceased. He also found a contused lacerated wound anterior on right knee, C.L.W. of both the ankles laterally and contusion over the left upper arm . On internal examination he found a depressed fracture of the right frontal and parital bones. There was laceration over the brain and the right side dura was torn and congestion was present all over the brain. He opined that the cause of death was due to shock of skull fracture with brain laceration. He opined that all the injuries were antemortem and

were sufficient in the ordinary course to cause for death. In his cross examination he opined that if the sharp side of the blade of the axe (Article 27) was hit on the scalp portion then injury which would be caused wound definitely be an incised wound. He further stated that if a blow from the sharp side of the axe was given then a depressed fracture of the skull could be possible. He further admitted that the depressed fracture of the head could be caused by the blunt side of the axe (Article 27).

15. From the aforesaid medical evidence we find that P.W.No.6 Dr. Mahadeo Salgar had asserted that all the injuries seen by him could have been caused by the blade side of the axe (Article 27) as in his opinion the same was not sharp enough.

16. It is unfortunate that the prosecution did not ask, any question to the doctors relating to other axe which was seized at the behest of the accused No.2. We have however, seen that both the axes (Articles 26 and 27) are almost similar. It appears from the evidence of the doctor that he had described the wounds as C.L.W.’s because the margins were found irregular. It further appears that the weapons used were heavy

cutting weapons. Modi in his medical jurisprudence and toxicology (Twenty Second Edition) had observed at Page No.339 as follows :

> **"The edges of a wound made by a heavy cutting weapon, such as an axe,, hatchet or shovel, may not be as smooth as those of a wound caused by a light cutting weapon, such as a knife, razor, etc. and may show signs of contusion. Such a wound is , as a rule, associated with extensive injuries to deep underlying structure or organs".**

17. It appears that when deceased Darayappa was examined by P.W.No.6 Dr. Salgar he was obviously in a critical condition and the prime duty of the Dr. Salgar was not to record the wounds but to ensure that the deceased was required to be forwarded to the Civil Hospital Sangli for urgent and better treatment. It is in such situation he admittedly had not shaved the hair of the deceased or examined if the hair bulbs were crushed. It is further important to note that all the C.L.W.s described by him were found to be bleeding and were scalp deep. If these injuries had been caused with blunt weapon like sticks they might have caused

the depressed fracture but it is difficult to imagine that all the 11 injuries which were found on him would be scalp deep. The fact that the examination of P.W.No.6 Dr. Salgar was not thorough is also borne out from the fact that at the stage of post mortem only 6 injuries were found on the head. Obviously Dr. Kulkarni who conducted post mortem had to remove the stitches. He has described the six wounds on different portions of the head and found each of them to be bone deep. In our view, the medical evidence indicates that six bone deep injuries were caused on the head of the deceased causing a depressed fracture and since Dr. Kulkarni categorically asserts that these injuries could be caused both from the blunt edge of the axe (Article 27) it cannot be said that the medical evidence is completely at odds with the occular evidence.

18. Having observed as above, it is also necessary to see that the defence of the accused was probable. We find that there are several circumstances which indicate that the deceased Darayappa could have initiated the aggression which led to the incident. When we deal with these circumstances, we bear in mind that the burden on the defence to prove their right of

private defence is not as heavy on the burden on the prosecution to prove their case beyond reasonable doubt. The accused only have to prove their defence beyond the preponderance of possibility. The circumstances which lead us to infer that the defence of the accused might be true are as under:

a) That a spade was found on the scene of offence. This spade was found to have blood group A on its blade as well as handle. It is not the prosecution case that this spade was used by any of the accused for assaulting the deceased. P.W.No.3 Shalini categorically admitted that this spade belonged to the deceased. The record indicates that one of the accused i.e. accused no.3 also had blood group A and the defence was that the deceased had used this spade to strike accused no.3 on his forehead causing a bleeding injury. This defence taken by the accused is corroborated by the finding of A group on the spade and the fact that the accused no.3 did in fact had bleeding injury on his forehead.

b) Complete absence in the evidence of Shalini

about any reference to the use of this spade or any explanation on her part as to how the blood came to be found on this spade.

c) The categorical admissions by Shalini in her evidence that when accused Nos. 1 to 4 refused to give her husband water from the well, her husband went to brake the water channel and when he had broken the water channel the incident of assault commenced. From this, it is obvious that the deceased Darayappa had taken the first aggressive step and must have been holding the spade when the incident actually commenced.

19. In our opinion these aspects indicate that the origin of the incident is not truly disclosed before us. It appears that due to the blow by the spade which caused a bleeding wound on the forehead of accused No.3, a right of private defence could have accrued in favour of the accused. However, in our view after holding that the right of private defence would accrue, it must be held that the said right of private defence was grossly exceeded. Even after the first three blows

were given by the accused Nos. 1, 2 and 4 and the deceased had fallen on the ground, the assault on him was continued even when he was lying in a supine condition. It appears from the occular as well the medical evidence that even after he fell on the ground four more injuries were caused on his head. In the circumstances, we feel that the person who gave blows on the Darayappa after Darayappa fell on the ground must be said to have exceeded their right of private defence. No doubt, P.W.No.3 Shalini has named accused No.1 Laxman and Accused No.4 Rajaram to be the persons who assaulted by the axes with them on the head of the deceased after he fell on the ground but in so far as Rajaram is concerned, the version given by her in her substantive evidence is not corroborated by her own F.I.R. Therefore, benefit of doubt be given to the accused No.4 Rajaram. In so far as Laxman is concerned he would clearly have exceeded his right of private defence and would be liable to be convicted under Section 304 (Part I) of the Indian Penal Code. Similarly accused No.3 Keru who gave an axe blow on the hands of Shalini would also be liable to be convicted under Section 324 of the Indian Penal Code because Shalini was not an aggressor and was only trying to save her husband.

20. That brings us to the case against the accused Nos. 5 to 10. According to P.W.No.3 Shalini these accused persons had come there only after Darayappa had fallen down and she had covered his body. As regards the overt acts against the accused Nos. 8 Anubai and accused No.9 Indrabai she stated that they pulled her hair and caused her to fall on the ground. They delivered fist and kicks blows to her. She has further stated that accused No.1 Laxman had caused an axe injury on the hands of Rajaram Pawar and accused No.10 Sambhaji hit Rajaram Pawar on the nose with an aluminium pot. She had lastly stated that the accused No.5 Atmaram, Accused No.6 Sarjerao and Accused No.7 Sukhadeo started delivering stick blows on the ankles, knees and back of Darayappa. This version given by P.W.No.3 Shalini in her substantive evidence however finds only a limited corroboration in the F.I.R. In her F.I.R. (Exh.41) she had stated that accused No.5 Atmaram gave an axe blow on the back and gave stick blow on the deceased. She has further stated that accused No.6 Sarjerao and accused No.7 Sukhdeo came running there and beat her husband with sticks. There is no corroboration from the F.I.R. to her statement that accused Nos. 8 and 9 caused her to fell on the

ground and gave her fist and kicks blows. There is also no corroboration to her evidence about accused No.1 Laxman causing an axe wound to Rajaram Pawar or about accused No.10 hitting Rajaram with an aluminium pot. In fact, Rajaram Pawar entered into the witness box and did not support the prosecution case of assault on him or others. . The presence of accused No. 10 on the spot is not even referred in the entire F.I.R. The single incised wound on the person of P.W.No.3 Shalini is attributed to accused No.3 and we have already held that the accused No.3 would be liable to be convicted under section 324 of the Indian Penal Code for inflicting this injury. It appears from the medical evidence that two of the injuries on Shalinibai were on the skull bone. Shalini in her evidence does not state as to who had hit her on her head. In our view taking into account all these facts, this is not a fit case where acquittal of the accused Nos. 5 to 10 should be interfered with. The net result is appeal is partly allowed in the following terms.

a) The acquittal of the accused No.1-Laxman Sambhaji Shejul is quashed and set aside and he is convicted for an offence punishable under Section-304 (Part-I) of the Indian Penal Code. He is sentenced to

suffer R.I. for 5-years and to pay a fine of RPS.20,000/- in default to suffer further R.I. for a period of 2-years. He is acquitted from rest of the charges against him.

b) Accused No.3 Keru Dnyanu Shejul is convicted for an offence punishable under Section 324 of the Indian Penal Code for causing an injury by a dangerous weapon to P.W.No.3 Shalini Darayappa Shejul and he is sentenced to undergo imprisonment for the term already undergone and to pay a fine of Rs.15,000/-, in default to suffer R.I. for 6-months. He is acquitted from the rest of the charges against him.

c) The acquittal of all other accused of the charges against them is confirmed.

d) The Judgment and order passed by the Additional Sessions Judge, Sangli on 28.3.1988 in Sessions Case Nos. 112 of 1986 and 125 of 1986 will stand modified accordingly.

e) The fine amount is to be paid within a period of 60-days from today.

f) Accused No.1 will surrender to his bail bonds forthwith.

g) The bail bonds of accused No.3 to stand cancelled only after the payment of fine of Rs.15,000/-.

h) If the fine amount is recovered, an amount of Rs.30,000/- from the same be paid to P.W.No.3 Shalini Darayappa Shejul.

i) Accused No.1 Laxman Sambhaji Shejul is entitled to set off of the imprisonment already undergone by him in accordance with law.

(S.S.PARKAR, J.)

(R.S. MOHITE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 575 OF 1988

The State of Maharashtra.
....Appellant.
Vs.

1. Laxman Sambhaji Shejul and ors.
....Accused.

A.P.P. Mr.F.R. Shaikh for the Appellant.
Adv. Smt. S.D. Khot for the Respondent Nos. 1 to 7.

CORAM: S.S.PARKAR &
R.S.MOHITE, JJ.

DATED: 2ND SEPTEMBER,2004.

ORAL JUDGMENT (PER R.S. MOHITE, J.)

OPERATIVE ORDER

. For the reasons separately recorded in the Judgment appeal is partly allowed on the following terms:

a) The acquittal of the accused No.1-Laxman Sambhaji Shejul is quashed and set aside and he is

convicted for an offence punishable under Section-304 (Part-I) of the Indian Penal Code. He is sentenced to suffer R.I. for 5-years and to pay a fine of Rs.20,000/- in default to suffer further R.I. for a period of 2-years. He is acquitted from rest of the charges against him.

b) Accused No.3 Keru Dnyanu Shejul is convicted for an offence punishable under Section 324 of the Indian Penal Code for causing an injury by a dangerous weapon to P.W.No.3 Shalini Darayappa Shejul and he is sentenced to undergo imprisonment for the term already undergone and to pay a fine of Rs.15,000/-, in default to suffer R.I. for 6-months. He is acquitted from rest of the charges against him.

c) The acquittal of all other accused of the charges against them is confirmed.

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i) Accused No.1 Laxman Sambhaji Shejul is entitled to set off of the imprisonment already undergone by him, in accordance with law.

(S.S.PARKAR, J.)

(R.S. MOHITE, J.)